Supreme Court of the United States

OCTOBER TERM, 1970

70-11

No. ~~661~~

CHEVRON OIL COMPANY,

Petitioner,

versus

GAINES TED HUSON,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit .

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

No.

CHEVRON OIL COMPANY,
Petitioner,

versus

GAINES TED HUSON,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Chevron Oil Company, respectfully prays that a writ of certiorari be issued out of and under the seal of this Court to review the decision of the United States Court of Appeals for the Fifth Circuit in No. 28,448 rendered on July 14, 1970, which reversed an earlier Judgment by the District Court of the United

States for the Eastern District of Louisiana, New Orleans Division, in Civil Action No. 68-19D, dismissing respondent's complaint.

JURISDICTION

Jurisdiction to review this case upon writ of certiorari is authorized and created by U.S.C.A. Title 28, Section 1254(1). See: *General Talking Pictures Corporation* versus *Western Electric Company, Inc., et al.*, 304 U.S. 175 (1937); *The Tungus* versus *Skovgaard*, 358 U.S. 588 (1959); and, *Goett* versus *Union Carbide Corp.*, 361 U.S. 340 (1960).

The opinion of the Court of Appeals for the Fifth Circuit was rendered July 14, 1970. A Petition for Rehearing was filed by petitioner on July 27, 1970 and denied August 10, 1970, without a further opinion. A motion was made to that Court for stay of mandate pending the filing of this petition for certiorari and granted on August 25, 1970.

OPINIONS BELOW

The Judgment of the District Court is printed in the Appendix; and, the opinion and denial of rehearing by the Court of Appeals for the Fifth Circuit are printed in the Appendix.

QUESTIONS PRESENTED

1- Whether the laws of the State of Louisiana (LSA-C.C. articles 2315 and 3536) are made applicable

under the provisions of the Outer Continental Shelf Lands Act, U.S.C.A. Title 43, Sections 1331 et seq., to an accident occurring on a fixed and immobile artificial island drilling structure located off the Louisiana coast, resulting in personal injury and damages, but not death, to an individual thereon.

2- If the answer to the foregoing question No. 1 is in the affirmative, whether LSA-C.C. article 3536 allows respondent only one year, calculated from the date of the accident, within which to file his complaint for damages under LSA-C.C. article 2315.

3- If the answer to the foregoing question No. 1 is in the negative, whether the admiralty and general maritime law applies to an accident occurring on a fixed and immobile artificial island drilling structure located off the Louisiana coast, resulting in personal injury and damages, but not death, to an individual thereon.

4- If the answer to the foregoing question No. 3 is in the affirmative, whether a separate trial on the issue of laches is required in order for respondent to establish and show excusable delay in the filing of his complaint more than one year after the alleged accident and for petitioner to be able to prove prejudice as a result thereof.

STATUTE INVOLVED

Pertinent provisions of the Outer Continental Shelf Lands Act, U.S.C.A. Title 43, Sections 1331 et seq., and

LSA-C.C. articles 2315 and 3536, are set forth in the Appendix.

STATEMENT

Respondent sued petitioner for personal injuries allegedly sustained on the latter's fixed and immobile artificial island drilling structure off the Louisiana coast, while in the course and scope of his employment by the independent contractor, Otis Engineering Corporation.

Upon completion of discovery and subsequent to the initial Pre-Trial Conference, a Motion for Summary Judgment was asserted by petitioner against respondent under the provisions of LSA-C.C. article 3536, on the grounds that any and all of his claims were perempted, prescribed and time-barred inasmuch as the complaint was filed more than 24 months after the date of the alleged accident. The District Court on July 23, 1969 granted a summary judgment to petitioner relying on *Rodrigue, et al.* versus *Aetna Casualty and Surety Company, et al.*, 395 U.S. 352 (1969), after which an appeal was taken by respondent to the United States Court of Appeals for the Fifth Circuit.

In reversing the District Court, the Appellate Court held in its July 14, 1970 opinion that notwithstanding the contrary holding in *Rodrigue*, supra, the admiralty and general maritime law doctrine of laches was applicable to the alleged accident of respondent occurring on petitioner's fixed and immobile artificial island drilling structure and remanded the case for a

trial on the merits. A petition for rehearing was timely filed, but promptly denied, without opinion, on August 10, 1970.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals for the Fifth Circuit erred and misdirected itself, as follows:

1- In holding that the laws of the State of Louisiana (LSA-C.C. articles 2315 and 3536) are not made applicable under the provisions of the Outer Continental Shelf Lands Act, U.S.C.A. Title 43, Sections 1331 et seq., to respondent's alleged accident occurring on petitioner's fixed and immobile artificial island drilling structure located off the Louisiana coast;

2- In failing to hold as a matter of law under the provisions of LSA-C.C. article 3536 that respondent's claims, filed more than 24 months after an alleged accident occurring on petitioner's fixed and immobile artificial island drilling structure off the Louisiana coast, were perempted, prescribed and time-barred;

3- In holding that the admiralty and general maritime law doctrine of laches was applicable to respondent's alleged accident on petitioner's fixed and immobile artificial island drilling structure; and,

4- In holding that as a matter of law petitioner was not entitled to a separate trial on the issue of laches in order for respondent to establish and show excusable delay in the untimely filing of his complaint and whether petitioner could prove prejudice as a result thereof.

REASONS RELIED ON FOR GRANTING THE WRIT

1- The Court below has decided a question of law in conflict with an applicable decision of this Court and has departed so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

It is undisputed and the evidence clearly established that at all times pertinent to the allegations of the complaint, respondent worked in the course and scope of his employment by and under the control, direction and supervision of the independent contractor, Otis Engineering Corporation, on petitioner's fixed and immobile artificial island drilling structure off the Louisiana coast. Moreover, the affirmative allegations of respondent in the complaint, which was filed January 4, 1968, clearly and unequivocally show that the cause of action, if any, arose out of a December 17, 1965 injury.

Because of these uncontroverted facts, the District Court properly dismissed the complaint inasmuch as there was no genuine issue as to any material fact and petitioner was entitled to summary judgment as a matter of law. This Court recently considered and re-

viewed the applicable laws to such "artificial island drilling rigs located on the outer Continental Shelf off the Louisiana coast," in *Rodrigue, et al.* versus *Aetna Casualty and Surety Company, et al.*, supra, and beginning at page 355, stated:

> "In light of the principles of traditional admiralty law, the Seas Act, and the Lands Act, we hold that petitioners' remedy is under the Lands Act and Louisiana law. The Lands Act makes it clear that federal law, supplemented by state law of the adjacent State, is to be applied to these artificial islands as though they were federal enclaves in an upland State. This approach was deliberately taken in lieu of treating the structures as vessels, to which admiralty law supplemented by the law of the jurisdiction of the vessel's owner would apply. The Hamilton, 207 U.S. 398 (1907). This was done in part because men working on these islands are closely tied to the adjacent State, to which they often commute and on which their families live, unlike transitory seamen to whom a more generalized admiralty law is appropriate. Since the Seas Act does not apply of its own force under admiralty principles, and since the Lands Act deliberately eschewed the application of admiralty principles to these novel structures, *Louisiana law is not ousted by the Seas Act, and under the Lands Act it is made applicable.* (Emphasis added).

The purpose of the Outer Continental Shelf Lands Act was to define a body of law ap-

> plicable to the seabed, the subsoil, and the fixed structures such as those in question here on the outer Continental Shelf. That this law was to be federal law and then only when not inconsistent with applicable federal law, is made clear by the language of the Act."

Accordingly, the substantive law of the State of Louisiana was applicable to respondent's claims arising out of his alleged injury on petitioner's fixed and immobile artificial island drilling structure. In this connection, LSA-C.C. article 3536 was controlling, as well as the provisions of LSA-C.C. article 2315, wherein the right to recover against a tort-feasor must be exercised by a claimant within one year.[1] Such limitation of action is a period of peremption[2] and the Supreme Court of Louisiana in *Guillory* versus *Avoyelles Ry. Co.*, 104 La. 11 (1900), on page 15, ruled:

> "When a statute creates a right of action and stipulates a delay within which the right is to be executed, the delay thus fixed is not, properly speaking, one of prescription, but is one of peremption. Statutes of prescription simply bar the remedy. Statutes of peremption destroy the cause of action itself. That

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[1] *Bound* versus *T. L. James & Co.*, 124 F.Supp. 563 (1954); *Tapp* versus *Guaranty Finance Co.*, 158 So.2d 228 (1964); and, *Gatson* versus *B. F. Walker, Inc.*, 400 F.2d 671 (1968).

[2] *Mejia* versus *U.S.*, 152 F.2d 686 (1946); *Lafarque* versus *Samuel*, 367 F.2d 396 (1966); and, *Gaston* versus *B. F. Walker, Inc.*, 400 F.2d 671 (1968).

is to say, after the limit of time expires the cause of action no longer exists; it is lost."

In *Mejia*, supra, the United States Court of Appeals for the Fifth Circuit was called upon to interpret the application of LSA-C.C. articles 2315 and 3536 in a tort action. Therein, on page 688, it was held:

> "The only statute in the state of Louisiana providing for damages for death is Article 2315 of the Civil Code of that state, as amended, which creates such rights, but which limits its life to the space of one year from the death.[3] The one-year limit of Article 2315 is not in the nature of a limitation but is a peremption, and, unless the right created by the Article is exercised within the one-year period, it ceases to exist and is completely lost.[4]
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> ---
>
> [3]2315 (2294) (N 1382). Torts-Liability-Survival of action. — Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it; - - - - .
>
> [4]*Goodwin* versus *Bodcaw Lumber Co.*, 109 La. 1050, 1066, 34 So. 74, 80; *Thompson* versus *Gallien*, 5th Cir., 127 F.2d 664."

Simply stated, respondent in his complaint untimely asserted and sought certain rights granted by LSA-C.C. article 2315, which was controlled by LSA-C.C.

article 3536. The question was simply whether or not he exercised his rights strictly in accordance with this law. He did not and his rights, if any, are now peremepted, prescribed and time-barred.

In effect, respondent suggested that because of ignorance of the law, he should be excused for the delays and procrastination in asserting his rights. Of course, this is contrary to the jurisprudence of Louisiana wherein it is quite clear that such an error of law affords no relief.[3] This is true even in the case where plaintiff engaged and relied upon the advices of his attorney.[4]

Historically, the substantive law of Louisiana has always allowed an injured party the period of one year within which to seek redress against an alleged tort feasor. Black's Law Dictionary, Third Edition, on page 1672, describes substantive law, as follows:

> "That part of the law which the Courts are established to administer, as opposed to the rules according to which the substantive law itself is administered. That part of the law

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[3] LSA — C.C. article 7.
Oglesby versus *Attrill*, 105 U.S. 605 (1882); *Russ* versus *Union Oil Company*, 113 La. 196 (1904); *Brewster* versus *J. C. Byram & Co., Inc.*, 149 So. 118 (1933); *Adle, et al.* versus *Prudhomme*, 16 La. Ann. 343 (1861); and, *Ackerman* versus *McShane*, 43 La.Ann. 507 (1891).

[4] *McMurray* versus *Orleans Parish School Board*, 179 So. 834 (1938); and, *Arrington* versus *Grant Parish School Board*, 130 So.2d 443 (1961).

> which creates, defines, and regulates rights, as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtaining redress for their invasion. —".

In this connection, LSA-C.C. article 2315 dates back more than 150 years to the Civil Code of 1808 and to the Code Napoleon of 1804. Moreover, LSA-C.C. article 3536 in substance originated in the Civil Code of 1825 and neither were in any manner whatsoever affected nor changed by *Rodrigue,* supra. This then cannot be conscientiously urged as a "complete change in the law," as suggested below by respondent.

2- The Court below has decided important questions of law which have not been, but should be, settled by this Court.

In *Rodrigue,* supra, this Court, on page 365, after a lengthy discussion about the inapplicability of the admiralty and general maritime law to this type of an artificial island drilling structure, unequivocally ruled:

> "In view of all this, and the disclosure by Senator Cordon to the Senate upon introduction of the bill that the admiralty or maritime approach of the original bill had been abandoned, it is apparent that the Congress decided that these artificial islands, though surrounded by the high seas, were not themselves to be considered within maritime jurisdiction. Thus the admiralty action under the Seas Act no more applies to these accidents

actually occurring on the islands than it would to accidents occurring in an upland federal enclave or on a natural island to which admiralty jurisdiction had not been specifically extended. At a minimum, the legislative history shows that accidents on these structures, which under maritime principles would be no more under maritime jurisdiction than accidents on a wharf located above navigable waters, were not changed in character by the Lands Act."

The Appellate Court below clearly erred in failing to apply this clearly defined principle of law. Otherwise, as a result of the erroneous July 14, 1970 opinion, two separate laws are applicable in accidents occurring on fixed and immobile artificial island drilling structures. If the occurrence results in death to an individual, under the holding in *Rodrigue,* supra, the provisions of the laws of Louisiana are available; but, if only personal injuries are involved, then the admiralty and general maritime law shall control.

The Appellate Court below further erred in the conclusion contained in the July 14, 1970 opinion on page 13 wherein it was held:

— "The doctrine of laches applies. Here, there being no question of adequate actual notice, complete lack of any prejudice, and a forthright failure to urge laches; Delgado v. Ma-

lula, 5 Cir., 1961, 291 F.2d 420, 1961 A.M.C. 1706, the suit was timely filed."

In the District Court, the only issue presented and resolved by the Judgment was that of prescription and peremption under the laws of Louisiana. The issue as to the possible application of the doctrine of laches under the admiralty and general maritime law was not argued or for that matter even presented, and a separate trial is required thereon. *Costello* versus *United States*, 365 U.S. 265 (1961); *Vega* versus *The Malula*, 291 F.2d 415 (1961); *Delgado* versus *The Malula*, 291 F.2d 420 (1961); *Fidelity & Casualty Co. of N.Y.* versus *C/B Mr. Kim*, 345 F.2d 45 (1965); *Akers* versus *State Marine Lines, Inc.*, 344 F.2d 217 (1965); and, *Giddens* versus *Isbrandsten Co.*, 355 F.2d 125 (1966). Obviously, if the admiralty and general maritime law is ultimately held to be controlling, petitioner is entitled to its day in Court on this issue and respondent must establish and show excusable neglect in failing to file his cause of action within the one-year period; and, whether petitioner can prove to have been prejudiced thereby.

CONCLUSION

It is respectfully submitted that a writ of certiorari should be granted, that the decision of the United States Court of Appeals for the Fifth Circuit in No. 28,448 should be reversed and that the judgment of the District Court of the United States, Eastern District of

Louisiana, New Orleans Division, Civil Action No. 68-19D, should be reinstated.

New Orleans, Louisiana, September 4, 1970.

(SIGNED) LLOYD C. MELANCON
Counsel for Petitioner

MESSRS. McLOUGHLIN, BARRANGER, WEST, PROVOSTY AND MELANCON
Of Counsel

PROOF OF SERVICE

In furtherance of the Rules, I have served three copies of the above and foregoing petition for writ of certiorari upon all parties, by prepaid mail addressed to their counsel this 4th day of September, 1970.

(SIGNED) LLOYD C. MELANCON

APPENDIX

LSA-C.C. article 3536

The following actions are also prescribed by one year:

That for injurious words, whether verbal or written, and that for damages caused by animals, or resulting from offenses or quasi offenses.

That which a possessor may institute, to have himself maintained or restored to his possession, when he has been disturbed or evicted.

That for the delivery of merchandise or other effects, shipped on board any kind of vessels.

That for damage sustained by merchandise on board ships, or which may have happened by ships running foul of each other.

LSA-C.C. article 2315

Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.

The right to recover damages to property caused by an offense or quasi offense is a property right which, on the death of the obligee, is inherited by his legal, instituted, or irregular heirs, subject to the community rights of the surviving spouse.

The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased in favor of: (1) the surviving spouse and child or children of the deceased, or either such spouse or such child or children; (2) the surviving father and mother of the deceased, or either of them, if he left no spouse or child surviving, and (3) the surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving. The survivors in whose favor this right of action survives may also recover the damages which they sustained through the wrongful death of the deceased. A right to recover damages under the provisions of this paragraph is a property right which, on the death of the survivor in whose favor the right of action survived, is inherited by his legal, instituted, or irregular heirs, whether suit has been instituted thereon by the survivor or not.

As used in this article, the words "child", "brother", "sister", "father", and "mother" include a child, brother, sister, father, and mother, by adoption, respectively.

U.S.C.A. Title 43, Section 1332

"(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter."

U.S.C.A. Title 43, Section 1333

"(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; restriction on State taxation and jurisdiction.

"(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

"(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this subchapter are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable

laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

"(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom."

JUDGMENT

Filed: Jul. 23, 1969

IN THE
DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

GAINES TED HUDSON,

Plaintiff,

versus

CIVIL ACTION
No. 68-19
SECTION D

CHEVRON OIL COMPANY,

Defendant.

The Motion for Summary Judgment asserted by Chevron Oil Company against the Complaint of plaintiff Mr. Gaines Ted Hudson having been heard before me in the regular course of proceedings and considering the briefs of counsel, depositions, evidence, exhibits, affidavits, interrogatories, pleadings and the entire record, and after due deliberation thereon, I conclude and find that plaintiff filed his Complaint in the above-entitled and numbered Civil Action on January 4, 1968, and alleged therein a December 17, 1965 accident. Accordingly, more than one year has elapsed between the date of the alleged accident and the filing of the Complaint, which under the June 9, 1969 ruling by the Supreme Court *in Rodrigue, et al. versus Aetna Casualty & Surety Company, et al.*, Num-

ber 436 - October Term 1968, plaintiff's action is now prescribed (time-barred) pursuant to the provisions of LSA - C.C. art. 3536. Therefore, in accordance with these findings of facts and conclusions of law,

IT IS ORDERED, ADJUDGED AND DECREED that defendant Chevron Oil Company have judgment on its Motion, and the Complaint of plaintiff Mr. Gaines Ted Huson filed against Chevron Oil Company in the above-entitled and numbered Civil Action be and it is hereby dismissed; and,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there exists no just reason for delay and the Clerk is hereby directed to enter a final Judgment hereon, adjudicating fewer than all of the claims asserted in the above-entitled and numbered Civil Action, all in accordance with the provisions of Rules 54(b) and 58 of the Rules of Civil Procedure.

Read, rendered and signed in open Court in New Orleans, Louisiana this 23rd day of July, 1969.

(Signed) EDWARD BOYLE, JR.
DISTRICT JUDGE

Submitted:

(Signed) SAMUEL C. GAINSBURGH
MESSRS. KIERR AND GAINSBURGH
Counsel for Plaintiff

(Signed) LLOYD C. MELANCON
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Counsel for Chevron Oil Company

(Signed) BLAKE WEST
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Counsel for Otis Engineering Corporation and
Highlands Insurance Company

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 28448

GAINES TED HUSON,
Plaintiff-Appellant,

versus

CHEVRON OIL COMPANY,
Defendant-Appellee,

versus

OTIS ENGINEERING CORPORATION, ET AL.,
Third Party Defendant.

Appeal from the United States District Court for the Eastern District of Louisiana

(July 14, 1970)

Before BROWN, Chief Judge, AINSWORTH and GODBOLD, Circuit Judges.

BROWN, Chief Judge: This case is a fallout from *Rodrigue*[1] and the Outer Continental Shelf Lands Act.

[1]Rodrigue v. Aetna Casualty & Surety Co., 1969, 395 U.S. 352, 89 S.Ct. 1835, 23 L.ed 360, ——— A.M.C. ———.

43 U.S.C.A. §1331, et seq. As a decision whose major thread in the quest for divination of legislative purpose was a conviction that Congress thought the interests of workers on the Outer Continental Shelf would be served best by adopting the law of the adjacent state as controlling federal law, the ink was scarcely dry when it became evident that the result might be quite something else. For against ingrained maritime principles of comparative fault, laches and the like, the Bar of Louisiana soon had to reckon with local restrictive, sometimes prohibitive principles of contributory negligence as a complete bar, peremptory limitations of short duration in death actions that extinguished the right,[2] prescriptive limitations of short duration in non-fatal injuries, and the peculiar vicarious substituted employer liability of the workmen's compensation statute that virtually extinguishes the now-common third party *Sieracki-Ryan-Yaka* seamen's suit.[3]

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[2]See Meija v. United States, 5 Cir., 1946, 152 F.2d 686, 1946 A.M.C. 967; Kenney v. Trinidad Corp., 5 Cir., 1965, 349 F.2d 832, 1965 A.M.C. 1659, *cert. denied*, 1966, 382 U.S. 1030, 86 S.Ct. 652, 15 L.ed.2d 542, ——— A.M.C. ———.

Although part of these problems may be ameliorated or eliminated by Moragne v. States Marine Lines, Inc., 1970, ——— U.S. ———, ——— S.Ct. ———, ——— L.Ed.2d ——— [No. 175, June 15, 1970], if the death is "maritime", there are problems remaining when we deal with a *Rodrique* non-maritime death on a fixed platform.

[3]See Gorsalitz v. Olin Matheson Chemical Corp., 5 Cir., 1970, ——— F.2d ——— [No. 27807, June —, 1970]. Also of recent vintage on the subject of an activity's being part of an employer's trade or business are Cole v. Chevron Chem. Co., 5 Cir., 1970, ——— F.2d ——— [No. 29032, June 10, 1970] and Arnold v. Shell Oil Co., 1969, 5 Cir., 419 F.2d 43, which interpret LSA-R.S. §23:1061.

"Where any person (in this section referred to as principal) undertakes to execute any work, which is a

Any results so foreign to the *Rodrique* declared statutory purpose of improving the lot of adjacent-shore based workers should certainly be avoided unless the tide is overwhelming.

The problem here is not academic, but acute, for a case timely brought in January, 1968 was held by the District Court to be Louisiana time-barred by reason of the subsequent 1969 decision in *Rodrique*. As in *Continental Oil Co. v. London Steam-Ship Own. Mut. Ins. Ass'n.*,[4] we decline to let literalisms produce unsound results. We reverse.

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part of his trade, business, or occupation or which he had contracted to perform, and contracts with any person (in this section referred to as contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any employee employed in the execution of the work or to his dependent, any compensation under this Chapter which he would have been liable to pay if the employee had been immediately employed by him; and where compensation is claimed from, or proceedings are taken against, the principal, then, in the application of this Chapter reference to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the employee under the employer by whom he is immediately employed.

"Where the principal is liable to pay compensation under this Section, he shall be entitled to indemnity from any person who independently of this Section would have been liable to pay compensation to the employee or his dependent, and shall have a cause of action therefor."

[4] Continental Oil Co. v. London Steam-Ship Owners Mut. Ins. Ass'n., 5 Cir., 1969, 417 F.2d 1030, ——— A.M.C. ———, *cert. denied*, 1970, ——— U.S. ———, ——— S.Ct. ———, 25 L.ed.2d 92, ——— A.M.C. ———.

On December 17, 1965 Appellant Huson, while employed by the Otis Engineering Corporation, a service contractor, suffered injuries on a fixed oil rig platform in the Outer Continental Shelf off the coast of Louisiana. On January 4, 1968, he instituted this third party damage action against Appellee Chevron Oil Company, the owner and operator of the fixed structure. The suit was timely commenced for in *Snipes*[5] we concluded as part of a sweeping declaration that for the Outer Continental Shelf, Congress had mandated[6] federal

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[5]Pure Oil Co. v. Snipes, 5 Cir., 1961, 293 F.2d 60, 1961 A.M.C. 1651.

[6]Section 1333 provides:

"(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State.

(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf."

43 U.S.C.A. § 1333.

maritime, not adjacent Louisiana parochial law. Thus the one year time limitation of Louisiana Art. 3536[7] would not bar a suit[8] for platform-based injuries if the claim passed muster under the maritime doctrine of laches. 293 F.2d at 70.

But all that is water over the dam because for platform-based occurrences,[9] *Rodrique* rejects maritime[10]

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[7]Article 3536, LSA-C.C.:

> "The following actions are also prescribed by one year: That for injurious words, whether verbal or written, and that for damages caused by animals, or resulting from offenses or quasi offenses. * * *"

See also Article 3537:

> "The prescription mentioned in the preceding article runs * * * from the day * * * on which the injurious words, disturbance or damage was sustained."

[8]On the maritime law approach our treatment of Art. 3536 was an *arguendo* assumption.

> "* * * For if the occurrence is governed by Louisiana law, it is *conceded* that a suit filed 22 months after the injury . . . is prescribed by the Louisiana one-year statute. LSA C.C. Art. 3536. * * *" (emphasis added)

293 F.2d 60, 62. Cited in brief of Amicus, p. 3.

[9]Apparently disregarded in *Dore* (also disposed of in *Rodrique)* was that the death was a maritime tort since the substance of decedent's injuries was consumated on the floating barge. See stipulation of parties in this Court's opinion:

> "That the decedent was a crane operator working on a crane on a pedestal on a stationary platform; That the crane was being used to unload a barge or vessel located immediately next to the stationary platform; That while a load was being lifted from the vessel with an intention to place it on the stationary platform, the crane toppled over with the decedent in the crane and fell to the barge or vessel below, which was being unloaded and the decedent was killed when he fell on the barge."
>
> Dore v. Link Belt Co., 1968, 5 Cir., 391 F.2d 671, 673, note 4.

See also T. Smith & Sons v. Taylor, 1928 276 U.S. 179, 48

in favor of local, adjacent "applicable and not inconsistent" law. "In light of the principles of traditional admiralty law, the Seas Act, and the Lands Act, we hold that petitioners' remedy is under the Lands Act and Louisiana law. The Lands Act makes it clear that federal law, supplemented by state law of the adjacent State, is to be applied to these artificial islands

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S.Ct. 228, 72 L.Ed. 520, 1928 A.M.C. 447; L'Hote v. Crowell, 1932, 286 U.S. 528, 52 S.Ct. 499, 76 L.Ed. 1270, 1932 A.M.C. 1450.

[10] For precedential buoyancy *Snipes, supra*, is probably way below her Plimsoll marks even though the Court's reference is an oblique footnote "cf" in note 9, 395 U.S. 363, ——— S.Ct. ———, 23 L.Ed.2d 369.

It may be ironic, however, that in this third party situation of a suit by the employee of an independent service contractor against the owner-operator of the fixed platform rig, the rights *vis-a-vis* employee and employer (Otis) are fixed, not by the Louisiana Compensation Act, but by the Longshoremen's and Harbor Workers' Act 33 U.S.C.A. § 901, et seq. See 43 U.S.C.A. § 1333(c). This includes specifically the provisions relating to third party suits, 33 U.S.C.A. § 933, which are quite different from those under LSA-R.S. §23:1101 (See note 6, Fidelity & Casualty v. C/B Mr. Kim, 5 Cir., 1965, 345 F.2d 45, 49, 1965 A.M.C. 1944) which ties third party subrogation recovery to the employee's rights, unlike the broader basis under the Longshoremen's Act, see, e.g., Federal Maritime Terminals, Inc. v. Burnside Shipping Co., 1969, 394 U.S. 404, 89 S.Ct. 1144, 22 L.Ed.2d 371, ——— A.M.C. ———. Apportionment of the burden of litigation and distribution of recoveries may also be different. See, e.g., Strachan Shipping Co. v. Melvin, 1964, 5 Cir., 327 F.2d 83, 1964 A.M.C. 288 (dissenting opinion); Haynes v. Rederi A/S Aladdin, 1966, 5 Cir., 362 F.2d 345, 350-51, ——— A.M.C. ———, *cert. denied*, 1967, 385 U.S. 1020, 87 S.Ct. 731, 17 L.E.2d 557. Likewise, in the so-called Louisiana law third party suit the real "substantive" standards of conduct, performance, negligence, etc. will to a great extent be "federal" because of mandated Coast Guard Safety Regulations (43 U.S.C.A. § 1333(e) (1)) which have the force of federal law. See, e.g., Manning v. M/V Sea Road, 1969, 5 Cir., 417 F.2d 603, 1969 A.M.C. ———.

as though they were federal enclaves in an upland State. This approach was deliberately taken in lieu of treating the structures as vessels, to which admiralty law supplemented by the law of the jurisdiction of the vessel's owner would apply. *The Hamilton*, 207 U.S. 398 (1907). This was done in part because men working on these islands are closely tied to the adjacent State, to which they often commute and on which their families live, unlike transitory seamen to whom a more generalized admiralty law is appropriate. Since the Seas Act does not apply of its own force under admiralty principles, and since the Lands Act deliberately eschewed the application of admiralty principles to these novel structures, Louisiana law is not ousted by the Seas Act, and under the Lands Act it is made applicable." *Rodrique, supra*, 395 U.S. at 355, ____ S.Ct. at ____, 23 L.Ed.2d at 364.

Several theories are advanced in refutation of the District Court's holding. Huson urges that on usual principles *Rodrique* should be applied prospectively and is purely procedural, not a part of the substantive right, so that the federal forum is not bound by it. On argument, we suggested the *Continental Oil* approach that with federal resources being adequate the Louisiana law (Art. 3536) was not needed and hence was not "applicable". Persuasive as is the equitable appeal of non-retroactivity[11] we prefer to rest reversal on the other grounds.

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[11]Application is most frequent in constitutional cases, not only criminal, see Linkletter v. Walker, 1965, 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 and United States v. Lucia., 5 Cir., 1969,

In assaying Art. 3536, (note 7, *supra*) we emphasize two important factors. The first is the role of the federal Trial Court in an Outer Continental Shelf case. It is most certainly not just an *Erie* Court of the state in which it sits. Rather, it is the Court to which Congress committed primary, if not exclusive, jurisdiction for the enforcement of all federal laws including those adopted from the adjacent state.[12] It is a federal

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416 F.2d 920, aff'd en banc, 1970, ——— F.2d ——— [No. 26316, March 30, 1970]; but civil as well. See Cipriano v. City of Houma, 1969, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647:

> "Where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding a nonretroactivity." 395 U.S. at 706, 89 S.Ct. at ———, 23 L.Ed.2d at 652.

Cf. Miller v. Amusement Enterprises, Inc., 5 Cir., 1970, ———

[12] See § 1333(b):

> "Jurisdiction of United States district courts
>
> (b) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose."

And see § 1333(a) (2), supra note 6 which concludes:

> "All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf."

This was a deliberate choice in rejecting the Amendment proposed by Senator Long of Louisiana "which would have

Court adjudicating a federal case controlled by direct or adoptive federal law.

Second, we recognize that *Rodrique*-Louisiana substantive right begins with "the quaint codal language of Art. 2315".[13] *C/B Mr. Kim, supra.* But unlike death actions for which Art. 2315 prescribes both the right and time, non-death rights created by Art. 2315 find their time restrictions in Art. 3536. Whether it is this verbal contiguity versus verbal separatism which leads to the result it is nevertheless unquestioned Louisiana jurisprudence that for death actions the time is an integral part of the right. *Meija, Kenney, supra* note 2.

But not so for Art. 3536. "For we have held that Art. 3536 is a procedural restraint which bars the remedy, but does not extinguish the right. *Page v. Cameron Iron Works, Inc.*, 5 Cir., 1958, 259 F.2d 420, 422. It is also good Louisiana law, so we have held in an opinion written for the Court by Judge Wisdom that the codal '[A]rticle expresses the general rule, supported by

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made 'the laws of each state applicable to the newly acquired area, and . . . the officials of such State [the agents empowered] to enforce the laws of the State in the newly acquired area.' " 395 U.S. at 359, ——, S.Ct. ——, 23 L.Ed.2d at 366.

[13]LSA-C.C. art 2315.

"Every act whatever of man that causes damage to another, obliges him by whose fault it happened to repair it."

* * *

"The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased * * *."

See Grigsby v. Coastal Marine Service of Texas, Inc., 5 Cir., 1969, 412 F.2d 1011, 1023-29.

ample Louisiana authority, that prescription is procedural and the law of the forum governs.' *Kozan v. Comstock*, 5 Cir., 1959, 270 F.2d 839, 841, 80 A.L.R.2d 310." *C/B Mr. Kim, supra*, 345 F.2d at 50.

In keeping with accepted conflicts principles, "purely procedural provisions may be overlooked". *Kenney supra*, 349 F.2d at 836. In *Levinson v. Deupree*, 1953, 345 U.S. 648, 73 S.Ct. 914, 97 L.Ed. 1319, dealing with a claim in a federal Court in which state law was said to be applicable, the Supreme Court asserted that the federal Court must look to the local law to determine the scope of the rights. But the Court was not bound to go beyond that "to strive for uniformity of results in procedural niceties with the courts of jurisdiction which originated the obligato." 345 U.S. at 651, 97 L.Ed. at 1324, 73 S.Ct. at ——.

This carries out the legislative aim of (i) a body of substantive law (ii) to be administered by federal Courts as federal law. State law is called on as "applicable" where it is necessary to "fill federal voids" and where state law "supplemented gaps in the federal law". Where there is a federal "law" or procedural practice which adequately "cope[s] with the full range of potential legal problems"[14] the state law — here prescription — is not applicable, for "the deliberate choice of federal law, federally administered, requires that 'applicable' be read in terms of necessity

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[14] *Rodrique, supra*, 395 U.S. 357, 358, 89 S.Ct. at ——, 23 L.Ed.2d at 365.

—necessity to fill a significant void or gap." *Continental Oil*; *supra*, 417 F.2d at 1036.

Here in rejecting the Louisiana period of limitations we recognize a federal Court in many situations applies the limitations period of the forum state when it acts as a "state" Court in an *Erie* sense. For this proposition Chevron cites *Wells v. Simonds Abrasive Co.*, 1953, 345 U.S. 514, 73 S.Ct. 856, 97 L.Ed. 1211; *Martin v. Texaco, Inc.*, 1968, E.D. La., 279 F. Supp. 1015, *inter alia*. And we recognize also that when applying a federal statute, if that statue does not itself set out a limitation period, we often adopt the periods of the states.

In *O'Sullivan v. Felix*, 1913, 233 U.S. 318, ____ S.Ct. ____, 58 L.Ed. 980, the Supreme Court set the stage by noting "That the action depends upon or arises under the laws of the United States does not preclude the application of the statute of limitations of the state is established beyond controversy * * * ." This Court has applied this approach quite frequently in cases arising under the Civil Rights Act in which a federal Court borrows the applicable statute of limitations from the state in which it sits. *McGuire v. Baker*, 5 Cir., 1970, ____ F.2d ____ [No. 27894, January 26, 1970]. See also *Beard v. Stephens*, 5 Cir., 1967, 372 F.ed 685.

Yet the state limitations have been rejected when a significant federal interest made them inappropriate. Never has this been more evident than in the maritime and quasi maritime area which is traditionally imbued with the laches doctrine and which presents a strong federal urge toward uniformity.

Of course there can be no doubt about the procedural resources of the federal Court. Thus we rejected the state statute of limitations for the doctrine of laches on the analogy of Jones Act limitations, in *Flowers v. Savannah Machine & Foundry, Co.*, 5 Cir., 1962, 310 F. 2d 135, 1962, A.M.C. 2537; and the Supreme Court's adoption of the Jones Act period for federally recognized recovery for unseaworthiness. *McAllister v. Magnolia Petroleum Co.*, 1958, 357 U.S. 221, 78 S.Ct. 1201, 2 L.Ed. 2d 1272, 1958 A.M.C. 1754. To make certain that platform workers would not have fewer rights than their counterparts ashore, Congress sacrificed some uniformity. But consistent with that objective this broad legislative aim is served by eliminating disparities having nothing to do with substantive obligations but arising from the sheer accident of geographical location in, on, over or around the high seas. 43 U.S.C.A. § 1333 (b); *Atlantis Development Corp. v. United States*, 5 Cir., 1967, 379 F. 2d 818.[15] Indeed, "* * *In actions arising at sea, frequently beyond the territorial bounds of any State, normal choices-of-law doctrines are likely to prove inadequate to the task of supplying certainty and predictability," *McAllister, supra*, 357 U.S. at 230, 78 S.Ct. at ____, 2 L.Ed.2d at ____ (Brennan, J. concurring) for in the Fifth Circuit

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[15]By rejecting state law here, we consider the real "interests sought to be served in the domestic intramural contest over the oil rich tidelands without disturbing interests of an international character having equal, if not greater importance in a day in which an incident on the High Seas may trigger a fissioned Armaggedon." *Continental Oil, supra*, 417 F.2d at 1037.

alone state statutes of limitations range from one year in Louisiana to six years in Mississippi.[16]

We therefore reject Art. 3536 as a bar in this or similar cases. The doctrine of laches applies. Here, there being no question of adequate actual notice, complete lack of any prejudice, and a forthright failure to urge laches, *Delgado v. Malula*, 5 Cir., 1961, 291 F.2d 420, 1961 A.M.C. 1706, the suit was timely filed.

REVERSED AND REMANDED.

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16 "However slavish absorption of state limitations rules will certainly not achieve federal uniformity when we consider that, in the Fifth Circuit-Gulf Coast area alone, this would mean, injured offshore of Mississippi, the litigant would have six years to file suit; offshore of Texas, two years; Alabama, one year in injury cases and two years in death cases; Florida, four years in injury cases and two years in death cases."
Brief of Amicus, p. 12.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1969

No. 28448

D. C. Docket No. CA-68-19-"D"

GAINES TED HUSON,
Plaintiff-Appellant,

versus

CHEVRON OIL COMPANY,
Defendant-Appellee,

versus

OTIS ENGINEERING CORPORATION, ET AL.,
Third Party Defendant.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before BROWN, Chief Judge, AINSWORTH and GODBOLD, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for

the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed, and that this cause be, and the same is hereby remanded to the said District Court in accordance with the opinion of this Court.

It is further ordered that defendant-appellee pay to plaintiff-appellant, the costs on appeal to be taxed by the Clerk of this Court.

Issued As Mandate: July 14, 1970.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 28448

GAINES TED HUSON,
Plaintiff-Appellant,

versus

CHEVRON OIL COMPANY,
Defendant-Appellee,

versus

OTIS ENGINEERING CORPORATION, ET AL.,
Third Party Defendant.

Appeal from the United States District Court for the Eastern District of Louisiana

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(August 10, 1970)

ON PETITION FOR REHEARING

Before BROWN, Chief Judge, AINSWORTH and GODBOLD, Circuit Judges.

PER CURIAM: IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK
August 25, 1970

EDWARD W. WADSWORTH
Clerk

Room 408-400 ROYAL ST.
NEW ORLEANS, LA. 70130

Mr. Lloyd C. Melancon
Attorney at Law
720 Hibernia Bank Bldg.
New Orleans, La. 70112

RE: NO. 28448 - Huson vs. Chevron Oil Co.
vs. Otis Engineering Corp., et al.

Mandate Stayed to 9/24/70.

Dear Sir:

The Court has this day granted a stay of the issuance of the mandate to the date as shown above. If during the period of the stay there is filed with the clerk of this Court a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of cer-

tiorari the mandate shall issue immediately under Rule 41, FRAP.

Under revised Rule 21(1) of the Supreme Court effective July 1, 1970, a record is no longer required in connection with an application for writ of certiorari, and therefore; will not be routinely prepared by this office. 38 LW 3502.

Enclosed is a copy of the opinion, judgment and order denying rehearing which are still required by the Supreme Court to be incorporated as an appendix to your petition.

Very truly yours,

EDWARD W. WADSWORTH,
Clerk
(Signed) G. F. GANUCHEAU
G. F. Ganucheau
Chief Deputy Clerk

cc: Mr. Samuel C. Gainsburgh
Mr. Blake West

/ra
enc.